

AO 257 (Rev. 6/78)

**DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT  
☒ SUPERSEDING
**OFFENSE CHARGED**
 Count 1: 18 U.S.C. § 1001 (False Statements) ☐ Petty  
 Count 2: 18 U.S.C. § 1001 (False Statements) ☐ Minor  
 Count 3: 33 U.S.C. §§ 1319(c)(1), 1321(b)(3)  
 (Clean Water Act - Negligent Discharge of a Pollutant) ☐ Misdemeanor  
 Count 4: 16 U.S.C. §§ 703 and 707(a)  
 (Migratory Bird Treaty Act) ☒ Felony

PENALTY: Count 1 &amp; 2: 5 years imprisonment, \$250,000 fine, 3 years supervised release, \$100 special assessment; Count 3: 1 year imprisonment, \$100,000 fine, 1 year supervised release, \$25 special assessment; Count 4: 6 month imprisonment, \$15,000 fine, 1 year supervised release, \$10 special assessment.

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

**DEFENDANT - U.S.**

▶ JOHN JOSEPH COTA

DISTRICT COURT NUMBER  
CR 08-0160 JCS**PROCEEDING**

Name of Complainant Agency, or Person (&amp; Title, if any)

U.S. COAST GUARD/EPA

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. ATTORNEY ☐ DEFENSE
SHOW  
DOCKET NO.
☐ this prosecution relates to a pending case involving this same defendant
MAGISTRATE  
CASE NO.
☒ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

CR-08-0160 MAG

Name and Office of Person

Furnishing Information on this form JOSEPH P. RUSSONIELLO

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned) J. SCHMIDT/STACEY GEIS

**DEFENDANT****IS NOT IN CUSTODY**

Has not been arrested, pending outcome this proceeding.

 1) ☐ If not detained give date any prior summons was served on above charges

 2) ☐ Is a Fugitive

 3) ☒ Is on Bail or Release from (show District)

NDCA

**IS IN CUSTODY**
 4) ☐ On this charge

 5) ☐ On another conviction

☐ Federal ☐ State

 6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

 Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF  
ARREST

Month/Day/Year

Or... if Arresting Agency &amp; Warrant were not

DATE TRANSFERRED  
TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted
**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**
☐ SUMMONS ☒ NO PROCESS\* ☐ WARRANT

Bail Amount: \_\_\_\_\_

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

\* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: \_\_\_\_\_ Before Judge: \_\_\_\_\_

Comments:

# United States District Court

FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

VENUE: San Francisco

UNITED STATES OF AMERICA,

V.

JOHN JOSEPH COTA,

*COTA-0160JS*

DEFENDANT.

SUPERSEDING INDICTMENT

Violations: Title 18, United States Code §  
1001 (false statements) (two counts); Title 33  
United States Code §§ 1319(c)(1)(A), 1321(b)  
(3) (Clean Water Act) (one count)(a Class A  
misdemeanor); Title 16 United States Code §§  
703, 707 (Migratory Bird Treaty Act) (one  
count) (a Class B Misdemeanor)

A true bill.

*Arguierio Mendez*  
Foreman

Filed in open court this 22nd day of

APRIL 2008

*Wing, H*  
Clerk

Bail, \$

NO PROCESS

*[Signature]*

FILED  
08 APR 22 PM 3:39  
RICHARD W. VILKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for Plaintiff  
United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
JOHN JOSEPH COTA,  
Defendant.

No. CR 08 -00160-JCS

VIOLATIONS:  
Title 18 U.S.C. § 1001 (false statements)  
(two counts);  
Title 33 U.S.C. §§ 1319(c)(1)(A),  
1321(b)(3) (Clean Water Act) (one  
count)(a Class A misdemeanor);  
Title 16 U.S.C. §§ 703, 707  
(Migratory Bird Treaty Act) (one count)  
(a Class B Misdemeanor)

**SUPERSEDING INDICTMENT**

The Grand Jury charges:

**INTRODUCTION**

At all times relevant to this Indictment:

1. The Defendant, JOHN JOSEPH COTA, was a resident of Petaluma, California, and a member of the San Francisco Bar Pilots Association. He held a federal first class pilot's license issued by the United States Coast Guard, and a state pilot's license issued by the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun. COTA had been employed as a Pilot in San Francisco Bay since 1981.

2. The *M/V Cosco Busan* was a 901 foot, 65,131 gross ton container ship registered in Hong Kong and bearing IMO number 9231743.

3. On November 7, 2007, the *M/V Cosco Busan*, with JOHN JOSEPH COTA as its pilot, departed the Port of Oakland in heavy fog and struck the Delta tower of the San Francisco Bay Bridge, which resulted in the discharge of more than 50,000 gallons of heavy fuel oil and caused environmental damage, including the loss of migratory birds.

**LEGAL FRAMEWORK**

**Federal Requirements for Licensed Pilot's Annual Medical Exam**

4. Title 46 U.S.C. § 7101 together with 46 C.F.R. §10.709 mandates that "every person holding a license or endorsement as a first class pilot shall have a thorough physical examination each year while holding a license or endorsement." 46 C.F.R. § 10.709(b). Further, an individual with a first class license or endorsement "may not operate under authority of that license or endorsement until a physical examination has been satisfactorily completed." 46 C.F.R. §10.709(d). The exam must be given by a licensed physician or physician assistant who completes a Coast Guard physical examination form or the equivalent. 46 C.F.R. §§ 10.205(d), 10.709(d).

**The Clean Water Act and the Oil Pollution Act**

5. In the Federal Water Pollution Control Act (the "Clean Water Act"), as amended by the Oil Pollution Act, 33 U.S.C. § 1321(b)(1), Congress has declared that it is the

1 policy of the United States that there should be no discharges of oil or hazardous  
2 substances into or upon the navigable waters of the United States or the adjoining  
3 shorelines.

4 6. The Clean Water Act makes it a crime for a person to negligently discharge oil into  
5 or upon the navigable waters or contiguous zone of the United States in such quantities as  
6 may be harmful. 33 U.S.C. §§ 1319(c)(1) and 1321(b)(3).

7 7. The Clean Water Act defines a “discharge” as any spilling, leaking, pumping,  
8 pouring, emitting, emptying or dumping. 33 U.S.C. § 1321(a)(2). The Clean Water Act  
9 defines “oil” as oil of any kind or in any form, including, but not limited to, petroleum,  
10 fuel oil, sludge and oil residue. 33 U.S.C. § 1321(a)(1).

11 8. Federal regulations promulgated under the Clean Water Act define a “harmful”  
12 quantity of oil as including any discharges of oil that cause a film or sheen upon or  
13 discoloration of the surface of the water or adjoining shorelines or cause a sludge or  
14 emulsion to be deposited beneath the surface of the water or adjoining shorelines. 40  
15 C.F.R. § 110.3

16 9. The Clean Water Act defines the “navigable waters” of the United States as the  
17 waters of the United States and the territorial seas, which are defined to be water  
18 extending three (3) miles seaward of the ordinary low tide mark. 33 U.S.C. §§ 1362(7)  
19 and 1362(8). Navigable waters also includes internal waters, which are “the waters  
20 shoreward of the territorial sea baseline.” 33 C.F.R. §§ 2.24(a); 2.36. San Francisco Bay  
21 is a navigable waterway of the United States.

#### 22 The Migratory Bird Treaty Act

23 10. The Migratory Bird Treaty Act (“MBTA”) makes it unlawful for any person, at  
24 any time, by any means or in any manner, to take or kill any migratory bird without a  
25 permit or as otherwise provided by regulation. 16 U.S.C. §§ 703, 707(a).

26 11. The term “take” in the MBTA includes killing or wounding. 50 C.F.R. § 10.12.

27 12. The Brown Pelican (*Pelecanus occidentalis*), Marbled Murrelet, (*Brachyramphus*  
28 *marmoratus*), and Western Grebe, (*Aechmophorus occidentalis*), among others, are listed



as migratory birds pursuant to the MBTA. 50 C.F.R. § 10.13.

**Count One -- 18 U.S.C. §1001  
(False Statements)**

13. Paragraphs 1-4 are realleged and incorporated by reference as though fully set forth herein.

14. On or about January 18, 2006, in the Northern District of California, the defendant,

JOHN JOSEPH COTA,

knowingly and willfully made a materially false, fictitious, and fraudulent statement and representation in a matter within the jurisdiction of the executive branch of the Government of the United States, specifically on United States Coast Guard Form CG-719K – Merchant Mariner Physical Examination Report – in that he certified that all the information he provided was complete and true to the best of his knowledge, when in fact he knew that the information he provided was neither complete nor true; including the information provided in Sections VI and VII of the form regarding current medications, the dosage, possible side effects and medical conditions for which the medications are taken.

All in violation of Title 18, United States Code, Section 1001(a)(2).

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**Count Two -- 18 U.S.C. §1001  
(False Statements)**

15. Paragraphs 1-4 are realleged and incorporated by reference as though fully set forth herein.

16. On or about January 19, 2007, in the Northern District of California, the defendant,  
JOHN JOSEPH COTA,  
knowingly and willfully made a materially false, fictitious, and fraudulent statement and representation in a matter within the jurisdiction of the executive branch of the Government of the United States, specifically on United States Coast Guard Form CG-719K – Merchant Mariner Physical Examination Report – in that he certified that all the information he provided was complete and true to the best of his knowledge, when in fact he knew that the information he provided was neither complete nor true; including the information provided in Sections VI and VII of the form regarding current medications, the dosage, possible side effects and medical conditions for which the medications were taken.

All in violation of Title 18, United States Code, Section 1001(a)(2).

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**Count Three -- 33 U.S.C. §§ 1319(c)(1), 1321(b)(3)**  
**(Clean Water Act – Negligent Discharge of a Pollutant)**

17. Paragraphs 1-10 are realleged and incorporated by reference as though fully set forth herein.

18. On or about November 7, 2007, in San Francisco Bay, within the Northern District of California, the defendant,

JOHN JOSEPH COTA,

did negligently discharge and cause the discharge of oil in such quantities as may be harmful from a vessel, the *M/V Cosco Busan*, into and upon the navigable waters of the United States, without a permit. Specifically, on or about November 7, 2007, Defendant Cota, while piloting the *M/V Cosco Busan*, negligently caused more than 50,000 gallons of heavy fuel oil to be discharged from the vessel into San Francisco Bay by acting in a negligent manner, that included, the following: (a) failing to pilot a collision free course; (b) failing to adequately review with the Captain and crew of the *M/V Cosco Busan* prior to departure the official navigational charts of the proposed course, the location of the San Francisco Bay aids to navigation, and the operation of the vessel's navigational equipment; (c) departing port in heavy fog and then failing to proceed at a safe speed during the voyage despite limited visibility; (d) failing to use the vessel's radar while making the final approach to the Bay Bridge; (e) failing to use positional fixes during the voyage; and (f) failing to verify the vessel's position vis-à-vis other established and recognized aids to navigation throughout the voyage.

All in violation of Title 33, United States Code, Sections 1319(c)(1)(A) and 1321(b)(3), a Class A misdemeanor.

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**Count Four – 16 U.S.C. §§ 703 and 707(a)  
(Migratory Bird Treaty Act)**

19. Paragraphs 1-13 are realleged and incorporated by reference as though fully set forth herein.

20. On or about November 7, 2007, in San Francisco Bay, within the Northern District of California, the defendant,

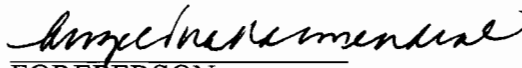
JOHN JOSEPH COTA,

without being permitted to do so by regulation as required by law, did take migratory birds, including at least one Brown Pelican, (*Pelecanus occidentalis*), Marbled Murrelet, (*Brachyramphus marmoratus*), and Western Grebe, (*Aechmophorus occidentalis*).


All in violation of Title 16, United States Code, Sections 703 and 707(a), and Title 50, Code of Federal Regulations, Sections 21.11, 20.71 and 20.72, a Class B misdemeanor.

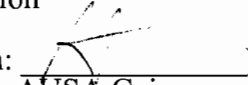
DATED:

A TRUE BILL.


  
FOREPERSON

JOSEPH P. RUSSONIELLO  
United States Attorney

  
BRIAN J. STRETCH  
Chief, Criminal Division

(Approved as to form: )  
AUSA Geis

RONALD J. TENPAS  
Assistant Attorney General

  
Richard A. Udell  
Senior Trial Attorney  
Environmental Crimes Section